

## SPECIAL COUNCIL MEETING

NOVEMBER 12, 2014

The Special Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Jay Furfaro, at the Council Chambers, 4396 Rice Street, Suite 201, Lihu'e, Kaua'i, on Wednesday, November 12, 2014 at 8:50 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum  
Honorable Mason K. Chock, Sr.  
Honorable Gary L. Hooser  
Honorable Ross Kagawa  
Honorable Mel Rapozo  
Honorable JoAnn A. Yukimura  
Honorable Jay Furfaro (*recused and not present 8:52 a.m. – 12:02 p.m.*)

### APPROVAL OF AGENDA.

Councilmember Rapozo moved for approval of the agenda as circulated, seconded by Councilmember Kagawa, and unanimously carried.

### PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

There being no one to provide public comment, the meeting proceeded as follows:

### COMMUNICATION:

C 2014-283 Communication (10/31/2014) from the County Attorney, requesting authorization to expend funds up to \$200,000 for Special Counsel's continued services to represent the County Council in Ernesto G. Pasion vs. County of Kaua'i, et al., Civil No. 13-1-0340 (Fifth Circuit Court), and related matters.

Council Chair Furfaro: Before we go into Executive Session, may I ask if there is any public comment at this time. Alice, come right up.

There being no objections, the rules were suspended.

ALICE PARKER: Good morning.

Council Chair Furfaro: Good morning.

Ms. Parker: Many of us are passionate for Pasion – intelligent, ethical, and truly honest and the best man to be County Auditor for Kauaʻi. It is sad that we, the members from the public must sit here for the thirtieth (30<sup>th</sup>) Executive Session to show support for one of the best, most honest people that seven (7) members of the Council unanimously hired to be our first County Auditor. To see this...and I have worked for him personally, I know how good he is. To see this dedicated man have to sue the County to keep his job, a job that he has done with distinction, is deplorable. To waste another two hundred thousand dollars (\$200,000) on an issue that should not have been happening is even more ludicrous. By the way, why is the public not informed of any County corrections for the misuse of funds which the audits uncovered? As Walter Lewis has so wisely said, "I believe that the best interest of the taxpayers would be served by seeking a settlement of the lawsuit rather than expending funds for persistent but likely futile defense of the case." Please members let us see these words of wisdom from a fine retired lawyer and deny any more tax funds being wasted and let us get this case settled. Thank you.

Council Chair Furfaro: Thank you. Do we have anyone else signed up?

JADE K. FOUNTAIN-TANIGAWA: Yes, the next registered speak, Chair, is Ken Taylor followed by Glenn Mickens.

Council Chair Furfaro: Ken.

KEN TAYLOR: Good morning Chair and members of the Council, my name is Ken Taylor. Before I get started, I would like to remind each of you that back in June I asked if we could have a running total of the amounts being requested for additional funds on these different lawsuits. And thanks to Ross at that time we did get the numbers including two hundred thousand dollars (\$200,000) in June so today it brings it up to over six hundred thousand dollars (\$600,000) and I am again disappointed that these running totals are not being (inaudible)...as an official of the County and as an individual, and a Senior Planning Inspector as an official of the County; and as an individual, the County based on past practices require the official as individuals to retain their own outside legal counsel. In my following of the Ernie Pasion vs County of Kauaʻi lawsuit, Chair Jay Furfaro as a County official and as an individual, I was surprised and disturbed to find out that the County Attorney and one of his Deputies are defense counsels for Council Chair Jay Furfaro. As a County official and as an individual breaking County past practices. What justifies this preferential treatment? Why is he not required to retain an outside legal counsel and pay the legal services out of his own pocket? I am disturbed that taxpayers are going to pay for Council Chair Jay Furfaro's total legal costs. This is surely setting a very bad precedent that will potentially escalate to higher increased property taxes and fees. The Pasion vs County of Kauaʻi, Council Chair Jay Furfaro, Jay Furfaro...

Councilmember Yukimura: Ken?

Ms. Tanigawa: Three (3) minutes.

Mr. Taylor: ...scheduled to be its first Court hearing on November 18, 2014 at the Fifth Circuit Court to be presided over by Honorable...

Councilmember Yukimura: He cannot hear.

Councilmember Chock: Ken?

Mr. Taylor: ...Kathleen Watanabe...

Councilmember Yukimura: Ken?

Council Chair Furfaro: They were trying to get your attention. Since these comments have come up accordingly, I am going to recuse myself from any testimony at this point.

*(Council Chair Furfaro was noted as recused.)*

Council Chair Furfaro, the presiding officer, relinquished Chairmanship to Councilmember Chock.

Councilmember Chock: Can you hear me?

Mr. Taylor: Yes.

Councilmember Chock: The timer went off a few minutes ago, I just wanted to let you know. Your time is up for three (3) minutes, so if you can just wrap it up in a sentence here because we have other people who want to testify as well.

Mr. Taylor: Before any more money is allocated to this lawsuit, the Council must address my concerns about the Council paying for Jay Furfaro's individual legal costs. As a taxpayer and I believe speaking for most taxpayers on the island, I ask you to explain to all of us why Councilmember Jay Furfaro should be treated differently than the abovementioned County employees. Thank you.

Councilmember Chock: Thank you. And just for the record, his name is "Furfaro." I just want to honor his true name, if we can, I know we keep coming back to that – "Furfaro." Thank you, Ken. Next speaker please.

Councilmember Yukimura: Thank you.

Ms. Fountain-Tanigawa: The next registered speaker is Shaylene Iseri.

Councilmember Chock: Oh...

Ms. Fountain-Tanigawa: Oh, I am sorry, Glenn Mickens and then Shaylene Iseri. I am sorry Shay.

GLENN MICKENS: With your permission, I have a copy of Walter Lewis' testimony and it is not very long, I would like to read mine, and I believe I could do it within six (6) minutes, if it is okay with you?

Councilmember Chock: Okay.

Mr. Mickens: Thank you. I will read mine first. "Today, you are summoned by the County Attorney's Office to approve spending two hundred thousand dollars (\$200,000) of our taxpayers' funds to litigate to its end a lawsuit arising from vindictive conduct by the County against an employee instead of recognizing an injustice, apologizing to the Plaintiff and seeking a settlement. This

Executive Session is the thirtieth (30<sup>th</sup>) time you have been required to pursue this travesty.

We have probably spent over a million dollars (\$1,000,000) on this issue and the sad part is that there would never have been a lawsuit if vengeance on the part of certain administrative people due to Mr. Pasion's doing his job – uncovering of the infamous gas gate scandal."

That is what it is all about. "And remember that Ernie was not in any way going after a person or persons for illegal doings. His doing his job by the Yellow Book as all his eight (8) audits have been done simply uncovered this wrongdoing and then vengeance began. His budget was cut by a staggering thirty-two percent (32%) whereas other departments averaged cuts were about three percent (3%). This cut make it impossible for him to keep operating in the same successful manner that he had been for four (4) years. Thus we are here today because Ernie has to use the legal system to fight back against a system that not only does not reward an honest, dedicated person for excellent at his job, but it wants to get rid of him. His job was not to find out if a person or persons was innocent or guilty of wrongdoing, just to do the audit by the books and let the chips fall where they might – to put more efficiency and cost savings in the government. Does this not once again show the gross incompetence of the operation of our government and why we need a change to a County Manager type?

Mr. Pasion will undoubtedly win a huge monetary settlement in Court as the facts are all on his side. Through all these sessions there has never been one shred of evidence showing just cause for what is being done to him and the physical, mental and legal problems he has had to endure will only add to his settlement." I hope these eight (8) audits that I am sure you have read the eight (8) audits, anyway, I hope these eight (8) audits that Ernie and his fine staff did will be brought to this floor so the people will have a chance to see them and you will have a chance to discuss them. These were the results that you demanded by your Auditor and he did not fail.

Now, if I could read Mr. Lewis' testimony. "In my view, the lawsuit brought by the County Auditor, Ernesto Pasion, presents a viable claim for damages from the vengeful conduct...

Ms. Fountain-Tanigawa: Three (3) minutes.

Councilmember Chock: Glenn, what we going do is, we are going to have everyone do their three (3) minutes, you just did your three (3). So, if we could have other people. You can come back for it.

Mr. Mickens: Come back for it?

Councilmember Chock: Yes.

Mr. Mickens: Okay.

Councilmember Chock: Next speaker, please.

Ms. Fountain-Tanigawa: The next speaker is Shaylene Iseri.

Councilmember Chock: Okay. Good morning, Shay.

SHAYLENE ISERI: Good morning Council Vice Chair and members of the County Council. I am here to offer comments on C 2014-283 and the concurring Executive Session item of ES-770 regarding the lawsuit brought by the County Auditor, former Deputy County Clerk Ernesto Pasion against the County of Kaua'i and Chair Jay Furfaro in his official and individual capacity. I am here to strenuously object to any funding for Special Counsel or the County Attorney's Office to provide legal services for Mr. Furfaro in his individual capacity. The record in this matter indicates that up until today, beginning with March 27, 2014, there has already been five hundred ninety thousand dollars (\$590,000) that has been requested to defend this lawsuit. Under the Charter Section 8.04, the County Attorney shall be the chief legal advisor and legal representative of all agencies including the Council, and of all officers and employees in matters relating to their official powers and duties.

Further on the Section 20.01 establishes a Code of Ethics to provide standards of integrity and morality in government service. In Section 20.02 states, "no officer or employee of the County shall appear on behalf of private interests before any County board or commission or agency," which of course includes the Court, "or 'e' uses official possession to secure a special benefit, privilege or exemption for himself and others and using County property for other than public purpose." How is it that the County Attorney, Deputy Hall, represented and performed legal services to Chair Jay Furfaro in his individual capacity in this lawsuit? In Section 20.04(C)(2)(E) it provides penalties of fine, suspension, or removal from office or employment. Section 2(e), the Mayor, the Council and the Board of Ethics shall be responsible for enforcement of his section. Is the Mayor and/or this body condoning this action and using public resources salaries of the County Attorney, and his Deputies, Clerical Staff, et cetera, to fund Furfaro's personal defense? I can only imagine given over half a million dollars (\$500,000) has already been requested how much of public funds have been used to serve Furfaro's personal interest? Is there also complicit liability for this body and the Mayor to see this occurring and allow it to continue? The public has already voiced its outrage regarding the astronomical expenditures of lawsuits and the burden placed on them to fund these claims and yet it appears that this Council idly sat and allowed this illegal use of public resources. I am requesting that this Council do its due diligence and not only stop this prohibited acts but also hold those engaging in this conduct responsible for reimbursement through the County for funds and services illegally used and charged to our taxpayers. Thank you.

Councilmember Chock: Thank you. Next speaker please.

Ms. Fountain-Tanigawa: We do not have any more registered speakers.

Councilmember Chock: That was it?

JOE ROSA: Good morning Members of the Council, for the record, Joe Rosa. Again, this is the thirtieth (30<sup>th</sup>) Executive Session Meeting that we are going to have to deal with the County Auditor's Office. I think it is utterly ridiculous that something should go on for years and years. This thing should have been buried last year, already, because all this time twenty-nine (29) sessions, where is the just cause? What are you trying to do? This is unnecessary. That is why a lot of the meetings go on and on and on because of things like this here. I look at all you people here, people with integrity and yet, there is no just cause for what you intend to do with the Auditor. He did his job and he rocked the boat so when you rocked the boat, what can you do? It is the truth that comes out and it was done by other members of the staff that found the discrepancies within our County system – the

Kīlauea Gym and also with the gas card. Why are the other six (6) not exposed to the public? We are the taxpayers and we want to know. That is why this past Election a couple of heads fell. There should be more things to be looked upon that have and hold the people accountable for the discrepancies going on in our County system. Sure, you might be friends like they always say, friends, you do not want to rock the boat but yet I remember the Federal people telling me, you do not go to jail to serve for somebody else's time. If they commit a crime, they pay for it. I know I would not go to jail for somebody else's problems. When I was working they always stressed and emphasized not to hide anything under the rug and what Ernie did was exposing what was going on within the system. There were a lot of discrepancies. I know Mr. Pasion is a person intelligent enough that would not go to jail for somebody else's crimes. I think this should come to once and for all like you did with the GMOs last week Wednesday, where no more funding was granted because it is the State's problem, and this is the County problem and there is no just cause yet on Mr. Pasion. He did his job honestly with a lot of enthusiasm to do what he was hired for by the special action of the Charter where his position was reinstated in the County system like I remember way back when I first voted, I voted for the County Auditor and somehow it got lost in between and came back. So now things are beginning to be in order.

Councilmember Chock: Three (3) minutes, Mr. Rosa.

Mr. Rosa: Yes, Sir, I thank you, Mr. Chock.

Councilmember Chock: Thank you so much.

Mr. Rosa: I will wrap it up. I think in today's meeting, everything should come to an end and proceed to whatever it is with a settlement once and for all – thirty (30) sessions is something ridiculous. Thank you.

Councilmember Chock: Thank you so much. Would anyone else like to testify on this item? Would someone like a second chance? Mr. Mickens?

Mr. Mickens: This is short, this is Mr. Lewis' testimony which pretty much goes along with everything else you have been hearing today. "In my view, the lawsuit brought by the County Auditor, Ernesto Pasion, presents a viable claim for damages from the vengeful conduct of the Conduct directed against him. I believe that the best interests of the taxpayers would be served by seeking a settlement of the lawsuit rather than expending funds for a persistent but likely futile defense of the case.

I would also bring to the Council's attention that the Executive Session proposed does not appear to be in compliance with the Hawai'i Sunshine Law (HRS Section 92) in that the notice given does not constitute a valid reason for the session. While Section 92-4 (4) contemplates a proper justification for an Executive Session can be the Council seeking a consultation with its lawyers, there is no comparable authority for the conveying of an Executive Session for a presentation to or consultation with the Council by its lawyers. The meeting notice clearly states that the session is being sought by the County Attorney's Office. The Council should reject convening the Executive Session sought." And as everybody else keeps saying this is the thirtieth (30<sup>th</sup>) Executive Session for this unprecedented, as far as I know, in the twenty (20) years that I have been coming to these Council meetings I never heard an Executive Session going this long. We are doing what? I mean what is the purpose of spending two hundred thousand dollars (\$200,000) to keep on going to these

Executive Session outside legal counsel? It makes absolutely no sense to me. Again, as everybody is pointing out, we are going after a guy that did his job – that is all he did. He did the job you hired him to do and he did it with bells on. He was not going after anybody in particular – he just did his job by that Yellow Book that he goes by, which is his Bible. Anyway, he did his job and his job pointed a finger at somebody. Now, we are sitting here trying to get rid of him – not you particular guys but at least the Administration for illegal doings. I hope you will take heed of what Mr. Lewis has said about this Executive Session not being properly noticed and also what the rest of the public is saying. There are only a few of us here support Ernie but if you go back and check you will see a lot more people. What he has done in the Filipino community and in his church group, we have talked to them all the time. They do not have the time to be here but their all completely unanimous in supporting this guy. Thank you, Mason.

Councilmember Chock: Thank you. Kaipo, please.

BILL “KAIPO” ASING: Good morning. For the record, my name is Bill “Kaipo” Asing. I was not going to say much but I guess I feel compelled to say something. I hope and pray that you make the right decision today. Your legacy, honesty, and integrity as Councilmembers will be judged by your final actions behind those close doors. I hope and pray that your final decision will be at the highest possible level ever. You will be judged by this action today. I have been there twenty-eight (28) years. I know what happens behind closed doors, I know what you will be faced with today, and it is not simple and easy. I hope and pray that you might make the right decision. The decision is going to be a big one and you will be judged by your honesty and integrity today as you make that decision. Thank you.

Councilmember Rapozo: I have a question.

Councilmember Chock: Oh, Kaipo, you have a question from Councilmember Rapozo.

Councilmember Rapozo: Thank you for being here and I ask this question because of your twenty-eight (28) years of service with this Council. Do you recall a time where the County Attorney’s Office represented an employee or an officer of this County when they were sued or named as a defendant in their individual capacity?

Mr. Asing: I cannot remember at any time as a matter of fact I happen to agree with some of the earlier testimony that it is unheard of and for me as an individual, I am concerned too because I know that in the Bynum case we had two (2) County employees that had to hire their own attorney’s. Why is that different? I think you have a lot to explain to the public. I do not believe that it is justified but you are going to have to answer that and I believe you owe the public that. You owe the public the reason for this. There is no justifiable reason for this, in my opinion.

Councilmember Rapozo: I plan to ask that question. Thank you.

Councilmember Chock: Question, Councilmember Bynum.

Councilmember Bynum: Thank you, Kaipo, for being here. You just kind of underlined the testimony that Shaylene made in you saying...is there a

County agency that you can take this concern to that is specifically there to address these kind of questions?

Mr. Asing: I believe so, yes.

Councilmember Bynum: And what would that agency be?

Mr. Asing: I believe the Board of Ethics.

Councilmember Bynum: And to your knowledge has this issue been taken by anyone to the Board of Ethics?

Mr. Asing: I am not sure but at this stage, I am sure they will.

Councilmember Bynum: I think that would be appropriate, do you not agree?

Mr. Asing: Yes.

Councilmember Bynum: Thank you.

Mr. Asing: Let me answer that question also. I believe that yes, the Councilmember is correct, there is an avenue and the avenue is the Board of Ethic but there is also a responsibility of this Council to do its due diligence too. And you must do its due diligence too and that is to answer some of the kinds of questions that were brought up today that you are responsible for answering. You are the body that should be answering that also. Thank you.

Councilmember Chock: Thank you. Any further? You want any other three (3) minutes?

Ms. Iseri: Yes, please.

Councilmember Chock: Please, come up.

Ms. Iseri: In response or follow-up to Kaipo's question, it is apparent that obviously Mr. Bynum did not hear the testimony that I had stated regarding Section 20.04 under the County Charter Section (c). It provides for penalties and under Section 20.04(C)(2)(E) it says specifically, "the Mayor, the County, and the Board of Ethics shall be responsible for enforcement," so it would be irresponsible for this body not to take action irrespective of whether there are individual who want to follow up with the Board of Ethics or any other agency if there is not only civil consequences, potentially criminal consequences for using private purposes...using public funds for private purposes. As you know it was testified earlier when I got sued here, I footed an eighty thousand dollars (\$80,000) attorney's fees bill. There were numerous others – Sheilah Miyake had come in here with her attorney's fees on case that was dismissed and so it is very upsetting to me as a taxpayer to have to foot the bill for Mr. Furfaro's personal and individual capacity lawsuit and that definitely has to be answered by the County Attorney's Office and this body who has met over twenty (20) times in Executive Session and how is this body not aware of this taken place. If it is aware, why is it not taking any action from back when the lawsuit was filed back in 2013 and that is what the concern is. It is not for the individual public to take action to the Board of Ethics, this is the right



appropriate body for individual taxpayers who are upset with this astronomical lawsuits that we are being forced to foot. It is not to shirk your responsibility. You need to take due diligence and take appropriate action to ensure that the County's funding is spent appropriately and not for private interest.

Councilmember Chock: Thank you. Would anyone else like to speak a second time? At this time, I would like to call the County Attorney up.

Councilmember Rapozo: I have a question for Mauna Kea. I do not know if you can answer this. You heard the concern and I do not know if this is a question you can answer in open session but is there a reason why Mr. Furfaro did receive County Attorney's representation in this case while being sued in his individual capacity?

MAUNA KEA TRASK, First Deputy County Attorney: I am not involved in this case. I am not litigating it. In fact when I was a Prosecutor, I worked with Ernie Pasion in the Daria Bruce case, thank you, Shaylene, Ernie was...long story-short; he was a volunteer finance guy for Holy Cross Church. He had uncovered some malfeasance – I worked with him on that case which led to a conviction. I have never been a part of this because of my relationship with Ernie. I cannot speak specifically to this case.

Councilmember Rapozo: Who can?

Mr. Trask: Deputy County Attorney Stephen Hall and Greg Sato.

Councilmember Rapozo: Okay, can we have Stephen Hall up here?

Mr. Trask: Can I just say one thing real fast though? There are instances, I would like to clear the record, where the County Attorney's Office have provided legal defense to County officers and employees in cases involving their individual capacity. In fact, the facts and circumstances of every case is specific and different, however, for example, police, public safety type cases, firemen types cases, and it is different but it goes before the Police Commission and they authorize and we provide that service. It is the question of whether how the complaint is plead whether it is in their individual capacity, official capacity, whether or not all actions were taken by the alleged party was done in their official capacity...

Councilmember Rapozo: Mauna Kea, let me stop there because I want to make sure we are comparing apples to apples. We are not talking about a police officer, because a police officer has a process which is when they are sued in their individual capacity, they go before the Police Commission, and the Police Commission makes a determination, and then it comes to the County whether or not we offer them assistance. This is not the same. This is not a police officer. This employee does not have an avenue to go through to get representation from the County. I am not talking about police cases because they have a separate track. I am talking about a normal officer of the County, or an employee...because I do not remember but I have only been here for the ten (10) of the last twelve (12) years but I do not recall that happening.

Mr. Trask: I just want to state the broad-brushstroke of saying that "you never do that," it is more nuanced as you said. There are specific

facts and circumstances, so with that if you have further questions, I do not know if you want me to read the Executive Sessions first and then you can ask or...

Councilmember Rapozo: Before we read the Executive Session, I kind of wanted to...if Stephen Hall can answer that question.

Mr. Trask: Okay.

Councilmember Rapozo: This question has been brought up for a while and I know I brought it up in one of the Executive Session when this started. I do not ever recall if we ever got a response but I am just curious and I think for the public's sake.

Mr. Trask: That is fine. Mr. Hall is right here to my right and I do not want to get in a way of questions but I just do want to say one (1) quick disclaimer under the Rules of Professional Conduct, Rule No. 3.6 – Trial Publicity, “a lawyer who is participating or who has participated in the investigation or litigation of a matter shall not make an extrajudicial statement. That the lawyer knows or reasonably should know expect be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.” However, it is qualified by Section (c) “Notwithstanding paragraph (a), a lawyer make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer’s client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.” And the only reason I stated that is because Mr. Hall, in a sense, has to comply with certain rules and members of the public do not and so I wanted to make that clear. Any questions that he is going to provide are going to be within bounds and he is not trying to be evasive but just trying to the many rules that exist.

STEPHEN F. HALL, Deputy County Attorney: Good morning. The question from Chair or excuse me, Councilmember Rapozo was why in this case are we representing Chair Furfaro in his individual capacity, right?

Councilmember Rapozo: That was a question from the public.

Mr. Hall: Okay, fair enough. And relayed to me through you. So I think you actually pointed out that you cannot take every case as being the same as others. I think that is an excellent point, because each case we have to evaluate on an individual basis. And so when we evaluated this case on an individual base, we looked at the complaint and in the complaint, although the caption states, “Chair Furfaro official individual capacity,” the complaint actually states differently. In paragraph 4 of the complaint states, “all actions taken by Furfaro as alleged herein were done in the course of his employment as an agent for the county.” Based on that, we interpreted that all actions of the complaint were in his official capacity and that is why we are representing him.

Councilmember Rapozo: Thank you. I will be sending over further questions but for now, thank you.

Councilmember Chock: I want to move us to reading the Executive Session but we have further questions of you gentlemen. Councilmember Kagawa.

Councilmember Kagawa: Since they are here, I think if I just turned on the television today or just read the newspaper, you know, and read the comments, I would as an observer I would think that the Council initiated...and I am just saying what I would think by hearing testimony and reading the newspaper that the Council initiated an investigation into wrongdoings by the County Auditor and I know for a fact that is far from the truth. Can you shed light as to...so that the public knows watching television and the news can report why this lawsuit is here before us?

Mr. Hall: Yes, Councilmember Kagawa, I think I can answer that. I think actually previously other Councilmembers have brought up the exact same question. The reason that we are here is because Ernie Pasion has sued the County and that is actually the reason why we have been here for quite a few sessions over the past few years.

Councilmember Kagawa: And is there any more as to why Mr. Pasion sued the County? Did something prior to that happen?

Mr. Hall: I am reluctant to get into that outside of what is stated in the complaint and our answer, I am reluctant to get into the details of why he is suing the County because it does involve personnel matters.

Councilmember Kagawa: Again to me it is nice that we try and abide by...trying to withhold as much information as possible but when the total wrong information is out there and perceived, I think actually it is a disservice to the public that the message that keeps being talked over and over again is really far from what is reality. Thank you.

Councilmember Chock: If there are no more questions, I will get to the reading of the Executive Session.

Councilmember Bynum: I am just going to want to make comments before we go into session.

Councilmember Chock: Is it okay if he reads first and then we can go into discussion?

Councilmember Bynum: Sure.

There being no objections, the rules were suspended.

Mr. Trask: With your permission Chair, can I read both Executive Sessions?

**EXECUTIVE SESSION:** Pursuant to Hawai'i Revised Statutes (HRS) §92-7(a), the Council may, when deemed necessary, hold an Executive Session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such Executive Session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a). (Confidential reports on file in the County Attorney's Office and/or the County Clerk's Office. Discussions held in Executive Session are closed to the public.)

ES-770 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4) and (8) and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, requests an Executive Session with the Council, to provide the Council with

briefings regarding Ernesto G. Pasion vs. County of Kaua'i, et al., Civil No. 13-1-0340 (Fifth Circuit Court), and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

ES-771 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the purpose of this executive session is to provide Council with a briefing and request for authority to settle the case of Lynell Tokuda et al., vs. County of Kaua'i, et al., Civil No. 13-CV-00202 DKW BMK (U.S. District Court), and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

The meeting was called back to order, and proceeded as follows:

Councilmember Bynum: I just want to make some comments before we go into Executive Session. This is the thirtieth (30<sup>th</sup>) Executive Session that has been said and almost everyone that came up here said this is a vendetta, we heard these words today. We heard them saying, "what you intend to do the Auditor," you know, it is really uncomfortable to be up here so the public needs to know that every one of these sessions has been recorded, it is part of a public record, and as the County Attorney has told us a number of times that when lawsuits are settled, those records may become public. When they are no longer germane or active. I have great comfort in knowing that as Kaipo said the legally, honesty, and the integrity will be tested because all of this is documented and people in the future can make judgments about it. I just wanted to say that what is in the public record is that this started as the County's response to personnel issues in the Auditor's Department, claims and cross-claims, which the Council is responsible for. We took those seriously and under the leadership of Council Chair Furfaro dealt with those issues as is our responsibility. There was an outcome and the outcome is confidential because it is a personnel issue. Mr. Rosa came up here and said what he believes, on public record, what the outcome was that Mr. Pasion, according to Mr. Rosa was suspended with pay for one (1) week. Subsequent to that the nature of this changed. We are now responding to a lawsuit from Mr. Pasion alleging misconduct by the Council Chair and this body. We are responsible to respond to those lawsuits. There are public records related to those lawsuits, substantial public records that any member of the public can get from the Courts. Some of those pages and pages of documents will shed light if the public and any of you choose to look at it to what the concerns were at the Auditor's Department that we were responding to. Those are in the public record. We are spending a lot of money to defend this because we have a strong defense presumably, so I would strongly encourage those of you who have concerns about what this is all about to look at the public records that are available to you because there are many answers that are available to you. The press has not chosen to look at these records and to enlighten the public about what is available in the public record but that is not our responsibility. Our responsibility is to respond to this lawsuit with legally, honesty, and integrity and that is what I believe this body has been doing despite all of these allegations. Finally, there is a Board of Ethics to go to answer questions that were raised here today. I have been to the Board of Ethics several times when questions were raised about my appropriate or my integrity, I went directly to the Board of Ethics to get their ruling which is the mechanism that we have available to us and I would encourage people to use that as well. Thank you.

Councilmember Chock:

Thank you. Further discussion?

Councilmember Yukimura: I am grateful to Councilmember Kagawa for asking the question to Mr. Hall as to why we are having these Executive Sessions and it needs to be clear that Ernie Pasion is suing the County. I think Councilmember Bynum's suggestion that people check the Court's record is very good one because you will see what is on public record. I just want to say that as to the issue of Council Chair Furfaro being sued personally, as was pointed out he was sued personally but the complaint itself written by the attorney's for Ernie Pasion say that, "all actions taken by Furfaro," I am quoting, "as alleged herein was done in the course and scope of his employment with the County and as an agent for the County." To me the motive for Mr. Pasion was vindictive and designed to hurt, not to secure justice when they sued Mr. Furfaro is in personal capacity. I happened to know that Council Chair and his wife, Ema, were trying to purchase a lot on the Big Island when this suit happened against him personally and because of this lawsuit against him personally, they were not able to purchase that lot. There have been huge impact and sacrifice on the part of Mr. Furfaro and out of this lawsuit which is not justified against Council Chair personally.

Councilmember Chock: Further discussion?

Councilmember Bynum: I have one (1) other thing to say but I will wait my turn.

Councilmember Chock: I would like to get us into Executive Session as soon as possible.

Councilmember Bynum: I just want to follow-up on what Councilmember Yukimura just said in that in stances where County employees footed their own legal bill that were discussed here today, those issues were addressed specifically by the Court and those were also in public record too. Thank you.

Councilmember Chock: With that do I have a motion?

Councilmember Rapozo moved to convene in Executive Session for ES-770, seconded by Councilmember Bynum, and carried by the following vote:

FOR EXECUTIVE SESSION:	Bynum, Chock, Hooser, Kagawa, Yukimura, Rapozo	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	Furfaro	TOTAL – 1.

Councilmember Rapozo moved to convene in Executive Session for ES-771, seconded by Councilmember Bynum, and carried by the following vote:

FOR EXECUTIVE SESSION:	Bynum, Chock, Hooser, Kagawa, Yukimura, Rapozo	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Furfaro	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

There being no objections, the Council recessed at 9:40 a.m., to convene in Executive Session.

The meeting was called back to order at 12:01 p.m., and proceeded as follows:

Councilmember Chock: At this time we would like to read the item that we will be voting on this morning.

COMMUNICATION:

C 2014-283 Communication (10/31/2014) from the County Attorney, requesting authorization to expend funds up to \$200,000 for Special Counsel's continued services to represent the County Council in Ernesto G. Pasion vs. County of Kaua'i, et al., Civil No. 13-1-0340 (Fifth Circuit Court), and related matters: Councilmember Kagawa moved to approve C 2014-283, seconded by Councilmember Rapozo.

Councilmember Yukimura: Can I say something?

Councilmember Chock: Sure.

Councilmember Yukimura: I just want to clear for the record that six (6) of the eight (8) audits have been finalized and they came to the County incomplete; two (2) of them are still pending a final report – the Fuel Audit and Staffing Review but we have not finalized them because we have not gotten the final report from the Auditor. Thank you.

Councilmember Chock: Thank you. Any further discussion? Seeing none.

The motion to approve C 2014-283 was then put, and carried by a vote of 6:0:0:1 (*Council Chair Furfaro was noted recused*).

ADJOURNMENT.

Councilmember Kagawa moved to adjourn the Special Council Meeting of November 12, 2014, seconded by Councilmember Yukimura, and unanimously carried (*Council Chair was noted as not present*).

There being no further business, the Special Council Meeting adjourned at 12:02 a.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA  
Deputy County Clerk

:dmc